

SENATE FLOOR SUBSTITUTE FOR
SENATE BILL 43

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO UTILITIES; PROVIDING FOR RENEWABLE ENERGY RULES FOR
PUBLIC UTILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Renewable Energy Act".

Section 2. FINDINGS AND PURPOSES.--

A. The legislature finds that:

(1) the generation of electricity through the
use of renewable energy presents opportunities to promote
energy self-sufficiency, preserve the state's natural resources
and pursue an improved environment in New Mexico;

(2) the use of renewable energy by public
utilities subject to commission oversight in accordance with
the Renewable Energy Act can bring significant economic

.150599.3

underscored material = new
[bracketed material] = delete

1 benefits to New Mexico;

2 (3) public utilities should be required to
3 include prescribed amounts of renewable energy in their
4 electric energy supply portfolios for sales to retail customers
5 in New Mexico by prescribed dates;

6 (4) public utilities should be able to recover
7 their reasonable costs incurred to procure or generate energy
8 from renewable energy resources used to meet the requirements
9 of the Renewable Energy Act; and

10 (5) public utilities should not be required to
11 acquire energy generated from renewable energy resources that
12 could result in costs above a reasonable cost threshold.

13 B. The purposes of the Renewable Energy Act are to:

14 (1) prescribe the amounts of renewable energy
15 resources that public utilities shall include in their electric
16 energy supply portfolios for sales to retail customers in New
17 Mexico by prescribed dates;

18 (2) allow public utilities to recover costs
19 through the rate-making process incurred for procuring or
20 generating renewable energy used to comply with the prescribed
21 amount; and

22 (3) protect public utilities and their
23 ratepayers from renewable energy costs that are above a
24 reasonable cost threshold.

25 Section 3. DEFINITIONS.--As used in the Renewable Energy

.150599.3

1 Act:

2 A. "commission" means the public regulation
3 commission;

4 B. "public utility" means an entity certified by
5 the commission to provide retail electric service in New Mexico
6 pursuant to the Public Utility Act but does not include rural
7 electric cooperatives;

8 C. "reasonable cost threshold" means the cost
9 established by the commission above which a public utility
10 shall not be required to add renewable energy to its electric
11 energy supply portfolio pursuant to the renewable portfolio
12 standard;

13 D. "renewable energy" means electric energy:
14 (1) generated by use of low- or zero-emissions
15 generation technology with substantial long-term production
16 potential; and

17 (2) generated by use of renewable energy
18 resources that may include:

19 (a) solar, wind, hydropower and
20 geothermal resources;

21 (b) fuel cells that are not fossil
22 fueled; and

23 (c) biomass resources, such as
24 agriculture or animal waste, small diameter timber, salt cedar
25 and other phreatophyte or woody vegetation removed from river

.150599.3

underscored material = new
[bracketed material] = delete

1 basins or watersheds in New Mexico, landfill gas and
2 anaerobically digested waste biomass; but

3 (3) does not include electric energy generated
4 by use of fossil fuel or nuclear energy; and

5 E. "renewable portfolio standard" means the
6 percentage of retail sales by a public utility to electric
7 consumers in New Mexico that is required by the Renewable
8 Energy Act to be supplied by renewable energy.

9 Section 4. RENEWABLE PORTFOLIO STANDARD.--

10 A. A public utility shall meet the renewable
11 portfolio standard requirements, as provided in this section,
12 to include renewable energy in its electric energy supply
13 portfolio. Requirements of the renewable portfolio standard
14 are:

15 (1) no later than January 1, 2006, renewable
16 energy shall comprise no less than five percent of each public
17 utility's total retail sales to New Mexico customers;

18 (2) the renewable portfolio standard shall
19 increase by one percent per year thereafter until January 1,
20 2011, when the renewable portfolio standard shall reach a level
21 of ten percent of a public utility's annual retail sales in New
22 Mexico and shall remain fixed at ten percent for each year
23 thereafter;

24 (3) the renewable portfolio standard
25 established by this section shall be reduced, as necessary, to

.150599.3

1 provide for the following specific procurement requirements for
2 nongovernmental customers at a single location or facility,
3 regardless of the number of meters at that location or
4 facility, with consumption exceeding ten million kilowatt-hours
5 per year. On and after January 1, 2006, the kilowatt-hours of
6 renewable energy procured for these customers shall be limited
7 so that the additional cost of the renewable portfolio standard
8 to each customer does not exceed the lower of one percent of
9 that customer's annual electric charges or forty-nine thousand
10 dollars (\$49,000). This procurement limit criteria shall
11 increase by one-fifth percent or ten thousand dollars (\$10,000)
12 per year until January 1, 2011, when the procurement limit
13 criteria shall remain fixed at the lower of two percent of that
14 customer's annual electric charges or ninety-nine thousand
15 dollars (\$99,000). After January 1, 2012, the commission may
16 adjust the ninety-nine-thousand-dollar (\$99,000) limit for
17 inflation. Nothing contained in this paragraph shall be
18 construed as affecting a public utility's right to recover all
19 reasonable costs of complying with the renewable portfolio
20 standard, pursuant to Section 6 of the Renewable Energy Act.
21 The commission may authorize deferred recovery of the costs of
22 complying with the renewable portfolio standard, including
23 carrying charges;

24 (4) the renewable portfolio shall be
25 diversified as to the type of renewable energy resource, taking

.150599.3

1 into consideration the overall reliability, availability,
2 dispatch flexibility and cost of the various renewable energy
3 resources made available by suppliers and generators; and

4 (5) renewable energy resources that are in a
5 public utility's electric energy supply portfolio on July 1,
6 2004 shall be counted in determining compliance with this
7 section.

8 B. If a public utility finds that, in any given
9 year, the cost of renewable energy that would need to be
10 procured or generated for purposes of compliance with the
11 renewable portfolio standard would be greater than the
12 reasonable cost threshold as established by the commission
13 pursuant to this section, the public utility shall not be
14 required to incur that cost; provided that the existence of
15 this condition excusing performance in any given year shall not
16 operate to delay the annual increases in the renewable
17 portfolio standard in subsequent years. When a public utility
18 can generate or procure renewable energy at or below the
19 reasonable cost threshold, it shall be required to add
20 renewable energy resources to meet the renewable portfolio
21 standard applicable in the year when the renewable energy
22 resources are being added.

23 C. By December 31, 2004, the commission shall
24 establish, after notice and hearing, the reasonable cost
25 threshold above which level a public utility shall not be

1 required to add renewable energy to its electric energy supply
2 portfolio pursuant to the renewable portfolio standard. The
3 commission may thereafter modify the reasonable cost threshold
4 as changing circumstances warrant, after notice and hearing.
5 In establishing and modifying the reasonable cost threshold,
6 the commission shall take into account:

7 (1) the price of renewable energy at the point
8 of sale to the public utility;

9 (2) the transmission and interconnection costs
10 required for the delivery of renewable energy to retail
11 customers;

12 (3) the impact of the cost for renewable
13 energy on overall retail customer rates;

14 (4) the overall diversity, reliability,
15 availability, dispatch flexibility, cost per kilowatt-hour and
16 life cycle cost on a net present value basis of renewable
17 energy resources available from suppliers; and

18 (5) other factors, including public benefits,
19 the commission deems relevant; provided that nothing in the
20 Renewable Energy Act shall be construed to permit regulation by
21 the commission of the production or sale price at the point of
22 production of the renewable energy.

23 D. By September 1 of each year until 2012, and
24 thereafter as determined necessary by the commission, a public
25 utility shall file a report to the commission on its purchases

.150599.3

1 of renewable energy during the prior calendar year and a
2 procurement plan that includes:

3 (1) the cost of procurement for any new
4 renewable energy resource in the next calendar year required to
5 comply with the renewable portfolio standard; and

6 (2) testimony and exhibits that demonstrate
7 that the proposed procurement is reasonable as to its terms and
8 conditions considering price, availability, dispatchability,
9 any renewable energy certificate values and diversity of the
10 renewable energy resource; or

11 (3) demonstration that the plan is otherwise
12 in the public interest.

13 E. The commission shall approve or modify a public
14 utility's procurement or transitional procurement plan within
15 sixty days and may approve the plan without a hearing, unless a
16 protest is filed that demonstrates to the commission's
17 reasonable satisfaction that a hearing is necessary. The
18 commission may modify a plan after notice and hearing. The
19 commission may, for good cause, extend the time to approve a
20 procurement plan for an additional sixty days. If the
21 commission does not act within the sixty-day period, the
22 procurement plan is deemed approved.

23 F. The commission may reject a procurement or
24 transitional procurement plan if it finds that the plan does
25 not contain the required information and, upon the rejection,

.150599.3

1 may suspend the public utility's obligation to procure
 2 additional resources for the time necessary to file a revised
 3 plan; provided that the total amount of renewable energy to be
 4 procured by the public utility shall not change.

5 G. A public utility may file a transitional
 6 procurement plan requesting that the commission determine that
 7 the costs of renewable energy resources that the public utility
 8 has committed to, or may commit to, prior to the commission's
 9 establishing a reasonable cost threshold, are reasonable and
 10 recoverable pursuant to Section 6 of the Renewable Energy Act.
 11 The requirements of annual procurement plan filings shall be
 12 applicable to any transitional procurement plan filing pursuant
 13 to this section.

14 Section 5. RENEWABLE ENERGY CERTIFICATES--COMMISSION
 15 DUTIES.--The commission shall establish:

16 A. a system of renewable energy certificates that
 17 can be used by a public utility to establish compliance with
 18 the renewable portfolio standard and that may include
 19 certificates that are monitored, accounted for or transferred
 20 by or through a regional system or trading program for any
 21 region in which a public utility is located. The kilowatt-hour
 22 value of renewable energy certificates may be varied by
 23 renewable energy resource or technology; provided that each
 24 renewable energy certificate shall have a minimum value of one
 25 kilowatt-hour of renewable energy represented by the

.150599.3

1 certificate for purposes of compliance with the renewable
2 portfolio standard; and

3 B. requirements and procedures concerning renewable
4 energy certificates that include the provisions that:

5 (1) renewable energy certificates:

6 (a) are owned by the generator of the
7 renewable energy unless: 1) the renewable energy certificates
8 are transferred to the purchaser of the energy through specific
9 agreement with the generator; 2) the generator is a qualifying
10 facility, as defined by the federal Public Utility Regulatory
11 Policies Act of 1978, in which case the renewable energy
12 certificates are owned by the public utility purchaser of the
13 renewable energy unless retained by the generator through
14 specific agreement with the public utility purchaser of the
15 energy; or 3) a contract for the purchase of renewable energy
16 is in effect prior to January 1, 2004, in which case the
17 renewable energy certificates are owned by the purchaser of the
18 energy for the term of such contract;

19 (b) may be traded, sold or otherwise
20 transferred by their owner to any other party; provided that
21 the transfers and use of the certificate by a public utility
22 for compliance with the renewable energy portfolio standard
23 shall require the electric energy represented by the
24 certificate to be contracted for delivery in New Mexico unless
25 the commission determines that there is a regional market for

.150599.3

1 exchanging renewable energy certificates;

2 (c) that are used once by a public
3 utility to satisfy the renewable portfolio standard and are
4 retired or that are traded, sold or otherwise transferred by
5 the public utility shall not be further used by the public
6 utility; and

7 (d) that are not used by a public
8 utility to satisfy the renewable portfolio standard or that are
9 not traded, sold or otherwise transferred by the public utility
10 may be carried forward for up to four years from the date of
11 issuance and, if not used by that time, shall be retired by the
12 public utility; and

13 (2) a public utility shall be responsible for
14 demonstrating that a renewable energy certificate used for
15 compliance with the renewable portfolio standard is derived
16 from eligible renewable energy resources and has not been
17 retired, traded, sold or otherwise transferred to another
18 party.

19 Section 6. COST RECOVERY FOR RENEWABLE ENERGY.--

20 A. A public utility that procures or generates
21 renewable energy shall recover, through the rate-making
22 process, the reasonable costs of complying with the renewable
23 portfolio standard. Costs that are consistent with commission
24 approval of procurement plans or transitional procurement plans
25 shall be deemed to be reasonable.

.150599.3

1 B. The commission shall not exclude from such
2 recovery reasonable interconnection and transmission costs
3 incurred by the public utility in order to deliver renewable
4 energy to retail New Mexico customers.

5 Section 7. COMMISSION--ADDITIONAL POWERS AND DUTIES.--The
6 commission:

7 A. shall adopt rules regarding the renewable
8 portfolio standard, including a provision for public utility
9 records and reports;

10 B. may require that a public utility offer its
11 retail customers a voluntary program for purchasing renewable
12 energy that is in addition to energy provided by
13 the public utility pursuant to the renewable portfolio
14 standard, under rates and terms that are approved by the
15 commission; and

16 C. may exempt from compliance with the renewable
17 portfolio standard a public utility that has an all-
18 requirements electric supply contract on July 1, 2004, and the
19 contract would not reasonably permit it to procure renewable
20 energy for purposes of meeting the renewable portfolio
21 standard. When the electricity supply contract is amended or
22 renegotiated, the commission may require that a renewable
23 portfolio standard become applicable.

24 Section 8. RURAL ELECTRIC COOPERATIVES--VOLUNTARY
25 TARIFFS.--The commission may require that a rural electric

1 cooperative:

2 A. offer its retail customers a voluntary program
3 for purchasing renewable energy under rates and terms that are
4 approved by the commission, but only to the extent that the
5 cooperative's suppliers make renewable energy available under
6 wholesale power contracts; and

7 B. report to the commission the demand for
8 renewable energy pursuant to a voluntary program.

9 Section 9. EXISTING RULES.--The commission shall
10 establish and amend rules and regulations for the
11 implementation of renewable portfolio standards consistent with
12 the Renewable Energy Act.

13 Section 10. FEDERAL REQUIREMENTS.--Renewable energy
14 procured or generated by a public utility to meet a federal
15 renewable portfolio standard may be used to satisfy the
16 required procurements of the Renewable Energy Act.